Division Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

M.A. No. 963 OF 2006

(APPEAL VALUED AT Rs 2,43,,082/-) Single Bench

APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988.

APPELANT (NON- APPLICANT NO.2) : TheNew India Assurance Company Limited, Near JhankarTalkies, Jagdalpur, Distt.Bastar(C.G.),through its-Divisional manager, Divisional-Office, IInd floor, Shriram Trade Centre, in front of Rajiv Plaza, Bilaspur (C.G.).

P.R. No. 17931/06
Presented by Shri Daghuraj Gupta
dated 27/12/06

VERSUS

RESPONDENTS (APPLICANT) :1. Smt. Bhedo Bai w/O Late Andharu Ram, aged - 45 years, R/O-Vill.- Bhandar Shivani Tahsil- Kondagaon,- Disst. Bastar (C.G.)

(NON-APPLICANT NO.1) :2. Umesh Singh S/O- Ajay Singh, Occupation- owner and driver, R/O-Village Bhandar Shivani, Tahsil- Kondagaon - Disst. Bastar (C.G.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(68)

मामला क्रमांक M.A. No. 963/..... **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

20.02.2007

Appellant by Shri Dashrath Gupta, learned counsel.

Heard on admission.

This appeal is directed against the award dated 28.04.2006 passed by the 4th Additional Motor Accidents Claims Tribunal, Bastar, place Jagdalpur in Claim Case No. 54 of 2005 whereby compensation of Rs.2,43,882=00 along with interest at the rate of 6% per annum from the date of application till recovery was awarded.

In this appeal, it is not disputed that Andharuram who was travelling in the ill-fated Matador No.C.G.17/H/0169 on 26.07.2004 died as a result of accident. Admittedly, the aforesaid Matador was insured by the appellant on the date of accident.

Learned counsel for the appellant has assailed the impugned award only on the following grounds in this appeal:

A) The first information report lodged by one Pravin Singh clearly shows that 15 to 20 passengers were being carried in the Matador at the time of accident which satisfactorily proves breach of policy, and therefore, the insurer is not liable to pay compensation.

B) It was also urged that the learned Motor Accidents Claims Tribunal erred in deducting one-third from the monthly income of the deceased towards personal expenses because children of the deceased were not claimants in this appeal.

No other ground was urged.

Having heard learned counsel for the appellant, I have perused the record of the Claim Case No. 54 of 2005. The Claimant-Bhedo Bai, widow

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मामला क्रमांक ……M.A.No.963/…… **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the deceased examined herself as also one Ramesh Lal Diwan A.W.2, an eye witness. Bhedo Bai testified that her husband was travelling in the Matador as a Coolie. In cross-examination, it was also suggested by the learned counsel for the Insurer that Andharuram used to earn his livelihood as a Coolie. It is also pertinent to note that no question was asked by the learned counsel for the Insurer to Ramesh Lal Diwan A.W.2, the sole eye-witness examined by the Claimant to show that 15 to 20 persons were travelling as passengers in the Matador. As against this, the Administrative Officer Mr. M.A. Joseph Shaili N.W.1 admitted in cross-examination that the risk of three Coolies was covered under the insurance policy and if the deceased was travelling as a Coolie, the Insurance-Company was liable to pay compensation. No independent evidence was led by the appellant-Insurer to show that the deceased was travelling as a gratuitous passenger in the Matador and not as a Coolie. So far as the first information report lodged by Pravin Singh is concerned, he was a total stranger and owned a grocery shop and had reached the place of occurrence after hearing about the accident and had lodged the F.I.R. thereafter. Therefore, the statement made in the F.I.R. by itself could not be sufficient to rebut the testimony of Bhedo Bai and Ramesh Lal Diwan A.W.2. The first contention raised by the learned counsel for the appellant must therefore fail.

The conclusion arrived at by the learned M.A.C.T. in paragraph 17 of the impugned award that the deceased would have earned his livelihood only in 25 days in a month is wholly erroneous. A daily bread earner has to earn his livelihood everyday so as to earn a square meal for the family. He cannot afford to sit idle for five days in month. The learned M.A.C.T. ought

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

to have assessed the dependency by multiplying the daily income of Rs.85/- by 30 (85 X 30). In this view of the matter, the compensation awarded by the learned M.A.C.T. is already on the lower side. So far as the deduction of one-third from the monthly income of the deceased towards personal expenses is concerned, the same could not be faulted with. The expenses of the family in the set up of the claimant are three-fold; personal expenses of the husband, personal expenses of the widow and expenses towards establishing the household. Thus, the deceased would be contributing two thirds of his monthly income towards expenses for maintenance of household as also the expenses of the claimant-Bhedo Bai. Deduction of one-third from the monthly income of the deceased towards his personal expenses to assess the monthly dependency is, therefore, wholly justified. In this view of the matter, the second contention of the learned counsel for the appellant also fails.

As a result, this appeal being devoid of merit is dismissed at the stage of admission.

Consequently, M.C.P.No.1312 of 2007 for stay also stands dismissed.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.